

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Telephone Number Portability)

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CC Docket No. 95-116
RM 8535

**OPPOSITION OF BELL ATLANTIC¹ AND NYNEX²
TO PETITION FOR FURTHER RECONSIDERATION**

The Commission should dismiss KMC Telecom's ("KMC's")³ request for further reconsideration of the Commission's Reconsideration Order.⁴ In that order the Commission denied KMC's request⁵ to accelerate the implementation of long-term number portability outside the top 100 Metropolitan Statistical Areas ("MSAs"). KMC's Petition is repetitious of its prior petition for reconsideration and lacks merit.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² The NYNEX telephone companies ("NYNEX") are New England Telephone and Telegraph Company and New York Telephone Company.

³ KMC Petition for Further Reconsideration ("Petition") (filed May 8, 1997).

⁴ First Memorandum Opinion and Order on Reconsideration, FCC 97-74 (rel. March 11, 1997).

⁵ KMC Petition for Reconsideration (filed August 23, 1996), directed to First Report and Order ("Order"), FCC 96-286 (rel. July 2, 1996).

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I. KMC's PETITION IS PROCEDURALLY IMPROPER

Section 1.429(i) of the Commission Rules provides:

Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious.

KMC's prior petition for reconsideration (at p. 2) requested the Commission to revise its Order to require LECs to provide long-term number portability outside the top 100 MSAs within six months of a bona fide request, which could be made after January 31, 1997. The Commission denied KMC's request by upholding the requirement in its Order that number portability does not have to be implemented outside the top 100 MSAs until after December 31, 1998.⁶ KMC's petition for further reconsideration (at p. 6) again asks the Commission to require LECs to implement number portability outside the top 100 MSAs prior to January 1, 1999. That is, KMC seeks such implementation within six months of a bona fide request, which could be made after November 1, 1997, unless the LEC obtains a statement from the switch vendor that, based on the orders it has received to date, it does not have the additional capability to update switch software and support the request. Since KMC's Petition is repetitious of its prior petition for reconsideration, it should be dismissed.⁷

⁶ Reconsideration Order para. 107; Order para. 80.

⁷ In its Petition (p. 7), KMC states that competitive carriers in the top 100 MSAs covered by Phases IV and V of the Commission's schedule should be able to make the same type of request as carriers outside the top 100 MSAs. Here again, KMC's position should be dismissed as repetitious since the Reconsideration Order denied any acceleration of the implementation schedule for the top 100 MSAs. Reconsideration Order para. 104.

Relying upon Amendment of Part 73, etc.,⁸ KMC contends that its Petition is procedurally proper since the Reconsideration Order changed the “underlying premise” of the Order that number portability would be implemented for every switch in the top 100 MSAs.⁹ KMC’s contention is wrong. In Amendment of Part 73, etc., a petition for further reconsideration was dismissed as repetitious since it did not address the modifications made in a reconsideration order, which kept intact the underlying premise of the original order. Similarly, in the present matter, the underlying premise of the Order -- that number portability does not have to be implemented outside the top 100 MSAs prior to January 1, 1999 -- has been kept intact by the Reconsideration Order, and KMC does not seek a modification of any modification made by the Reconsideration Order.

II. KMC’s PETITION IS SUBSTANTIVELY MERITLESS

Even if KMC’s Petition is not dismissed on procedural grounds, it should be denied because it lacks substance. KMC asserts (p. 5) that its proposals are justified because the burden of implementing number portability in the top 100 MSAs (prior to January 1, 1999) will be “significantly lighter” than the original implementation schedule, given the Commission’s decision to limit such implementation to switches for which a timely bona fide request has been made.¹⁰ However, the Commission’s implementation schedule remains very aggressive and presents a great challenge to the industry. In order to make the schedule more attainable and safeguard network reliability, the Commission eased the

⁸ 7 FCC Rcd 2954 (Mass Media Bur. 1992).

⁹ Petition, pp. 3-4.

¹⁰ See Reconsideration Order para. 60; FCC Rule 52.23.

schedule somewhat in its Reconsideration Order.¹¹ The resulting schedule “represents a reasonable balancing of competing interests, and carriers need to have certainty that these are the requirements with which they must comply.”¹²

Moreover, contrary to KMC’s suggestion (pp. 5-6, 8), vendor capacity was not the primary or only factor driving the Commission’s mandated implementation schedule for number portability. The primary factor was ensuring network reliability. For example, the Commission stated: “Our decision to extend the deadline for completing Phases I and II of our deployment schedule reflects the fact that we consider network reliability to be of paramount importance.”¹³ Other factors weighed by the Commission included: burdens faced by incumbent LECs and their ability to meet the mandate;¹⁴ and the need to “foster efficient deployment, network planning, and testing, [and] reduce costs”¹⁵ KMC essentially ignores these other factors and makes no showing whatsoever that its proposed acceleration of the schedule adequately accounts for these factors.

¹¹ See Reconsideration Order at paras. 60, 78, 83.

¹² Id. at para. 107. KMC’s assertion (p. 7) that the Commission’s schedule represents “gross and unlawful discrimination against consumers outside the top 100 MSAs” is clearly wrong and uncalled for. Section 251(b)(2) empowers the Commission to prescribe the “requirements” for scheduling implementation of number portability, which must be phased in given the gravity of the task, and the Commission has balanced costs and benefits to the public interest. In citing paragraph 88 of the Reconsideration Order, KMC (at p. 5) takes the phrase “significantly lighter” out of context. In that paragraph, in denying certain LEC proposals for extensions of the schedule, the Commission simply observed that those LECs’ “implementation obligations are likely to be significantly lighter than they assume.” [Emphasis Added]

¹³ Reconsideration Order para. 83. See also id. at para. 78.

¹⁴ Id. at paras. 59, 66, 89, 105, 107.

¹⁵ Id. at para. 59.

Further, it is totally improper for KMC to shift the onus to the incumbent LECs -- whose resources are already being strained to meet the schedule -- to obtain statements from vendors and/or waivers from the Commission if requests for acceleration as urged by KMC cannot be met.¹⁶ The Commission appropriately concluded:

We do not prohibit LECs from agreeing to accelerate implementation, either for specific MSAs or specific switches within MSAs. We find, however, that acceleration of our schedule is more properly determined by private agreements among carriers. Competitive LECs are free to negotiate with incumbent LECs for deployment of number portability ahead of our schedule.¹⁷

It is KMC that can file for a waiver to accelerate the schedule, if it chooses.

In all events, KMC's petition is unjustified by vendor capacity considerations. First, the industry does not yet know the volume of end offices for which number portability will be requested. Second, the volume of requests does not accurately reflect the volume of work required for implementing number portability. The network "backbone", signaling systems and databases must be deployed and/or upgraded, and operations support systems ("OSSs") must be improved as well. Third, KMC proposes no method of "measuring" or "tracking" how much vendor capacity exists or would be spare. Obtaining a statement from a vendor within nine months of the deployment time frame (the deadline for informing incumbent LECs which switches are requested) that excess capacity exists would be a highly inefficient and poorly designed means of determining the deployment of network capabilities. Further, manufacturers and LECs need appropriate lead time to coordinate and deploy identified

¹⁶ See Petition, pp. 8-9.

¹⁷ Reconsideration Order para. 106.


equipment needs. Network planning and upgrades are not and should not be done via "spur of the moment" decision making as would be necessitated by KMC's proposed scheme for accelerating number portability.

III. CONCLUSION

The Commission should deny KMC's Petition for Further Reconsideration.

Respectfully submitted,

BELL ATLANTIC
NYNEX


by Campbell L. Ayling

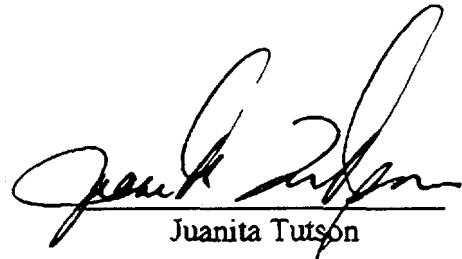
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CERTIFICATE OF SERVICE

I, Juanita Tutson, hereby certify that copies of the foregoing **OPPOSITION OF BELL ATLANTIC AND NYNEX TO PETITION FOR FURTHER RECONSIDERATION** were served on the parties listed on the attached service list, this 11th day of June, 1997, by first class United States mail, postage prepaid.



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